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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,460	03/11/2004	Erica Louise Evans	CM2731	6115

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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/798,460	Applicant(s) EVANS ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/9/04, 7/29/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase "greater than about 7 %" renders the claim vague and indefinite. It is not clear as to what range of the weight amount is covered by this limitation because the "about 7" itself may be greater or less than 7.

In claim 6, line 5, it is not clear whether the recitation inside the bracket should be considered a limitation.

The remaining claims are rejected as depending on the indefinite claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda et al. (US 2002/0041889 A1) in view of Oblong et al. (US 6217888 B1).

Claim 1 is directed to a composition comprising a) greater than about 7 % by weight of the composition of glycerin; b) a vitamin B₃ compound; and c) a natural moisturizing compound comprising aspartic acid, threonine, serine, . . . or mixtures thereof.

Masuda et al. teach a topical preparation comprising glycerin, DL-serine, and N,N,N-trimethylglycine. See Preparation Example 3: instant claims 5-7. See also Example 10 and 11. N,N,N-trimethylglycine meets the formula (I) of instant claim 6 when R₁, R₂, R₃ are CH₃ and n=1. The reference teaches the thickening agents of instant claims 10 and 11, which include polyacrylamide, polyacrylate, and sodium polyacrylate. See [0044]. Example 6 illustrates a toilet water formulation comprising 0.2 % of a thickening agent, methylcellulose. See instant claim 9. The exemplified toilet water formulations contain 4 % of glycerin and 6 % of 1,3-butylene glycol. Example 8 teaches a cleansing foam comprising 10 % of glycerin. The reference teaches both glycerin and 1,3-butylene glycol as humectants, thus it would have been obvious to adjust the amount of glycerin to up to 10 % to formulate a toilet water composition with similar humectancy. See instant claims 1 and 12. The reference also

teaches making compositions in the form of emulsion, lotion or cream. See [0054], Examples.

Masuda et al. also teach using medicinal ingredients including vitamin B₃, including benzyl nicotinate, nicotinamide, dl-alpha-tocopheryl nicotinate. While Masuda et al. broadly teach to make a cosmetic composition by combining the components of the presently claimed invention, the reference does not provide a specific teaching to select the vitamin B₃ compounds.

Oblong et al. teach that vitamin B₃ compound, particularly nicotinamide, is useful in regulating skin conditions such as the signs of skin aging and improving the skin texture. See col. 1, line 59 – col. 2, line 9; col. 3, line 17 – col. 4, line 44. The reference also teaches using nicotinic acid, tocopherol nicotinate, and inositol hexanicotinate, or mixtures thereof, in the most preferred amount of about 2-5 % by weight. See col. 4, line 44 – col. 6, line 57: instant claims 2, 3, and 12. The reference also teaches that preferred carriers for the invention include oil-in-water emulsion and water-in-silicone emulsions. See col. 7, line 59 – col. 10, line 58. See instant claim 8.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to have modified the exemplified cosmetic compositions of Masuda et al. by incorporating to the compositions a vitamin B₃ compound as motivated by Oblong et al. because i) Masuda et al. teach adding vitamin B₃ compounds as a cosmetic additive; and ii) Oblong et al. teach that vitamin B₃ reduces the signs of skin aging and improves the skin texture. The skilled artisan would have had a reasonable expectation of successfully producing a stable and improved cosmetic composition for

moisturizing and treating aging skin because both Masuda et al. and Oblong et al. compositions are directed to compatible formulations such as emulsions, cream, and lotion.

Conclusion

No claims are allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See Kanda (JP 08-020520). Kanda teaches that the high humectancy is obtained by combining trimethylglycine and polyol in the preferred amount of .01-3 wt % and 5-40 %, respectively. See abstract.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 6:30 PM.

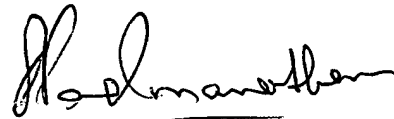
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gina Yu
Patent Examiner



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER